

... When court acts by George Rothwell Brown. [n. p. 1937].

THE PROPOSAL TO ADD SIX ADDITIONAL JUDGES TO THE SUPREME COURT OF THE UNITED STATES

How Questions of Constitutional Law Arise In the Supreme Court

The following article from the editorial page of the *San Francisco Examiner* of February 20, 1937, corrects false ideas of persons who do not know how or under what circumstances questions of constitutional law are presented to and decided by the Supreme Court:

WHEN COURT ACTS.

By George Rothwell Brown

Perhaps the strangest delusion one encounters in Washington is the theory that the Supreme Court could have held all those now null and void laws to be constitutional, if it had wanted to, but that it didn't want to.

The nation's highest tribunal is somehow pictured as composed of nine old hawks, sitting on a barnyard fence, waiting gleefully for a chance to swoop down on Mr. Roosevelt's legislative chickens.

This theory, which is reflected in nearly every congressional debate, illustrates the extent to which the fundamentals of the great question now agitating the country have been lost sight of.

Not once, since the agitation began, has anybody, on either side of the controversy, referred even in a footnote to the innocent bystander who is chiefly concerned.

This is John Smith Jones, today's real forgotten man.

John Smith Jones may be a corporation, or he may be an humble individual hooked by the prongs of the law for pressing a pair of pants for 15 cents instead of 20. He is the defendant in the case.

The Supreme Court does not of its own volition declare acts of Congress to be unconstitutional, and has never done so.

If Congress at Mr. Roosevelt's request should pass a law that was clearly unconstitutional, but which was so universally popular with all that everybody obeyed it, and nobody broke it or challenged it, there is no way in which the Supreme Court could declare it to be unconstitutional.

The trouble with the statutes which have been declared to be unconstitutional is that under them somebody was arrested, indicted, tried and convicted.

Believing himself unjustly treated the defendant takes his case to the Supreme Court. The Supreme Court is concerned wholly and exclusively in the administration of justice in particular cases. It says to Jones, in effect, "you are quite innocent. Congress did not have the power to pass the law under which you were convicted. The people in their Constitution never gave to Congress the power to enact this law".

That is all there is to it. Jones walks out a free man, and the law is void because it is in conflict with the Constitution.

What is lost sight of in today's debates and discussions is the fact that if the Supreme Court should hold a law to be constitutional when it believes it to be unconstitutional, there would be an end of justice for John Smith Jones. And administering justice to Jones is the sole reason for the existence of the Supreme Court.

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